

No. 18-60522

IN THE
United States Court of Appeals for the Fifth Circuit

DISH NETWORK CORP.,
Petitioner Cross-Respondent,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent Cross-Petitioner,

v.

COMMUNICATIONS WORKERS OF AMERICA, AFL-
CIO,
Intervenor

On Petition for Review of the Order of the
National Labor Relations Board, Case Nos.
16-CA-173719, 16-CA-
173720, 16-CA-173770, 16-CA-177314,
16-CA-177321, 16-CA-178881,
and 16-CA-178884

**UNOPPOSED MOTION
FOR EXTENSION OF TIME TO FILE
OPENING BRIEF**

Pursuant to Fifth Circuit Rule 31.4, Defendant-Appellant-Cross-
Appellee DISH Network Corporation respectfully requests a 40-day

extension of time, to and including November 26, 2018, to file its opening brief. Counsel for Respondent National Labor Relations Board and Intervenor Communications Workers of America both have indicated that they do not oppose the motion.

In support of this motion, DISH states as follows:

1. DISH's opening brief is currently due on October 15, 2018.

The requested extension would cause DISH's brief to be due on November 26, 2018. This is DISH's first request for an extension of time for any brief in this appeal.

2. An extension is justified due to the confluence of multiple and complicated issues in the appeal and multiple overlapping and conflicting deadlines in other matters.

3. During the time period that the opening brief must be briefed, undersigned counsel has obligations in a variety of matters that have been or cannot be extended and cannot be transferred to other attorneys. Those obligations include:

- a. The opening brief in *Krakauer v. DISH*, No. 18-1518, due to be filed in the Fourth Circuit on October 4th, 2018. This appeal involves a class of more than 18,000 members raising

claims under the Telephone Consumer Protection Act. The appeal follows four years and three stages of litigation in the district court (class certification, trial, and post-trial proceedings) and features a record of more than 10,000 pages. A 30-day extension to file this brief has already been granted.

- b. The answering brief in *Plastic Omnium Advanced Innovation and Research v. Donghee America, Inc.*, No. 2018-2087, due to be filed in the Federal Circuit on October 10, 2018. This complex patent appeal concerns the technology for manufacturing fuel tanks, and involves eleven claims of four different patents. A request for an extension will be filed shortly. Undersigned counsel is counsel of record.
- c. The reply brief in support of the petition for certiorari in *Williams v. Sessions* (S. Ct. No. 18-273), which is due to be filed in the United States Supreme Court on October 24, 2018. Extensions are unavailable for such briefs.
- d. The opening brief in *Pinter-Brown v. Regents of The University of California* (No. B290086), due to be filed in the

California Court of Appeal on October 29, 2018. The deadline for the brief has only just been set, and an extension is contemplated. Undersigned counsel is counsel of record.

4. In addition to these imminent deadlines, undersigned counsel has significant ongoing obligations in matters including the following:

a. *In re: Chinese Manufactured Drywall Products Liability Litigation* (MDL No. 09-2047; 5th Cir. No. 18-30742).

Undersigned counsel is lead appellate counsel for multiple defendants in this large multidistrict litigation, in which hundreds of cases have recently been remanded to various federal district courts. The case has a massive record spanning nine years of litigation. An appeal presenting multiple issues of personal jurisdiction is now awaiting briefing in this Court, and the plaintiffs also recently have requested a further interlocutory appeal for which undersigned counsel is principally responsible.

b. *Twitter v. Huang* (Cal. Ct. App. No. A155155), a putative class action involving engineers employed by Twitter. The court's order denying class certification is now on appeal.

5. An extension is further justified by the complexity of this appeal. Underlying this appeal is a final decision of the National Labor Relations Board finding both that DISH and the union were not at an impasse before DISH instituted a new compensation plan and, separately, that DISH constructively discharged 17 employees. Both issues raise significant legal issues on which the Board has a robust body of decisional law and also present substantial evidence challenges based on a record exceeding 1,000 pages and a multi-year history of collective bargaining.

6. Counsel of record in this case was counsel of record to DISH in a prior appeal to this Court (No. 17-10282) involving related proceedings. Petitioner's other counsel in this appeal lack the familiarity with the record and the case that counsel of record already has.

7. The undersigned respectfully submits that a level-1 extension of 30 days would be insufficient to fully address the multiple

issues in this matter and would allow insufficient time given counsel's other obligations.

8. On September 14, 2018, undersigned counsel communicated with David Casserly and Linda Dreeben, counsel for the Board. Mr. Casserly indicated that the Board does not oppose an extension of 40 days.

9. On September 21, 2018, undersigned counsel communicated with Matthew Holder, counsel for Intervenor Communications Workers of America. Mr. Holder indicated that the Intervenor does not oppose an extension of 40 days.

For the foregoing reasons the Court should grant DISH's motion for a 40-day extension to file its opening brief.

Respectfully submitted,

/s/ Eric A. Shumsky

Eric A. Shumsky
ORRICK, HERRINGTON &
SUTCLIFFE LLP
1152 15th Street NW
Washington, DC 20005
(202) 339-8400

Counsel for Defendant-Appellant-Cross-Appellee

September 25, 2018

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system on September 25, 2018.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ Eric A. Shumsky

Eric A. Shumsky

Counsel for Defendant-Appellant